IN THE COURT OF APPEAL OF THE DEMCRATIC SOCIALIST REPUBLIC OF SRI LANKA

Miriyagalla Kankanamalage Don Wimalasir
Gunatileka "Somi Madura"
Dedigamuwa, Ranala.

Plaintiff-Appellant.

C.A.No.692/2000 (F)
D.C.Homagama No. 870/
Cancelletion of Deed.

Don Chandradasa Attanayake (deceased)

1.Kabamullage Dona Piyawathi

2.Janaka Attanayake

3.lanka Sudesh Attanyake

All of No.11.Batewela Ranala.

Substituted-Defendant-Respondent

BEFORE : Deepali Wijesundera J., and
M.M.A. Gaffoor J.,

COUNSEL : Upali Seneratne for the Plaintiff-Appellant

Seevali Delgoda with Sajivi Amarawickrema for the Defendant-Respondent.

Both parties have filed their written submissions.

DECIDED ON: 22/07/ 2016

M.M.A. Gaffoor J.,

The plaintiff has filed this case on 03.05.1990 against the original defendant in the District Court of Homagama to set aside or for the cancellation of a deed of transfer bearing No.6005 dated 18.01.1984 attested by S.Wickreamarachchi, Notary Public . The plaintiff's position was that he never intended to transfer the land to the plaintiff, but to give it on lease. The plaintiff avers in his plaint that on a right the defendant took him to the Notary to execute the deed but the Notary refused to prepare the deed as it was about 10.0 Clock in the night but he sign some blank sheets and came. Later he came to know that what he signed was a deed of transfer and not a lease agreement.

The plaintiff also states in his plaint that the amount mentioned in the said deed No. 6005 is Rs.20,000/= but this lands in extent 2 Acres was worth about 2 ½ Lakhs in 1984.

The defendant had filed his answer denying the averments in the plaint and stating that he had purchased the land for valuable consideration and prayed for dismissal of the Plaint. The defendant also averred in the answer that the plaintiff's action is prescribed. After trial the learned District Judge delivered judgment on 03.10.2000, holding that the property had been duly transferred to the defendant by the said deed No.6005 and dismissed the plaintiff action with costs. The plaintiff has preferred this appeal against this judgment to this Court.

In the written submissions of the plaintiff, the following matters are taken material points:-

(1). the deed was lease and not a transfer.

The plaintiff h has not adduced any evidence to prove that what he signed was lease agreement and not a Deed of Transfer. According to P3, the land in dispute was earlier transferred by the defendant to the plaintiff and by P4, the plaintiff had re transferred the same land to the defendant. Both those deeds No.6004 (P3) and No.6005 (P4) had been extended on 18.01.1984 by the same Notary S. Wickramarachchi . This Notary has given evidence in this case. He has been called by the plaintiff. This witness has clearly stated in his evidence in chief to a suggestion by the plaintiff's counsel "that the plaintiff intended was to execute a lease agreement and not a transfer deed", it was told to him. (Page 117-118 of the brief). Under cross-examination, this witness said that before the attestation of this deed he had explained the deed to the grantor, grantee and the witnesses. The evidence of this witness is not contradicted. I am therefore of the opinion that the plaintiff executed not a lease agreement but a transfer deed and therefore the contention that P4 was not intended to be a deed of transfer cannot be accepted.

(2) Plea of <u>"non est factum"</u>

This maxim or plea is applicable only in cases where the person executed the document or deed is unaware that what he sign was not a

example of A intends to execute a conditional transfer in favour of B, but be executes a deed of transfer. Prof. Weeramantry states, " what must be established the order that such a plea may succeed is not merely that there was misapprehension in regard to the contents of the document, but that the misapprehension related to the character and class of document" See Weeramantry on Law of contract Vol. I, Page 296 . In this instant case, if the plaintiff's intention was only to execute a lease agreement and not a deed of transfer, then his misapprehension of the character or class of the document must be established by cogent evidence. The evidence of the Notary Wickremaarachchi is very clear. He has explained the nature of the deed to the plaintiff, the defendant and the witness and the Notary categorically denied that he was told that the plaintiff was intended to execute a lease agreement. In the light of the evidence I hold that the plea of ' non est factum' is not applicable to this case since the plaintiff knew very well that he was executing a deed of transfer. The Notary also denied that the plaintiff signed some blank papers in the night at his house. The evidence reveals that on 18 .01.1984 , the deed of transfer had been attested by the Notary P3 and P4 are those deeds and both these deeds were executed on the same day. According to the Notary both these deeds were sign at

transferor and in P4 the plaintiff should have signed as the transferor. In a transfer deed unlike a lease agreement, it is only the transferor signs and not the transferee. Considering this procedure, the plaintiff cannot be heard to say that he signed on some blank sheets. If that be correct, the defendant also must have signed on some blank sheets. On the contrary , it very clear that the plaintiff has signed the deed after knowing the nature of the deed P4. I therefore of the view that the pea of "non est factum': is not applicable to the plaintiff in this case.

(3) Action Prescribed.

The plaintiff says that the deed of transfer P4 had been executed on 18.01.1984 and he had come to know about it in 1986. If this statement is true, he could have instituted this action immediately thereafter. P6 is an affidavit filed by the defendant in the Primary Court case No.4919. This affidavit was signed on 09.01.1987 in which in paragraph 2 the defendant has stated that on 18.01.1984 by deed No.6005, he has brought the land for consideration from Wimalasiri, the plaintiff. At least, in 1986 or in the January 1987, the plaintiff came to know about the deed No.6005 which he is now seeking to cancel. If the plaintiff says

the execution of deed No.6005 as a deed of transfer it is serious matter. But he has not taken any action to have the deed cancelled in 1986 or in January 1987. Further, the plaintiff has not established fraud on the part of the defendant or the Notary. The defendant's contention is that the plaintiff action is prescribed.

In order to cancel a deed Notarially attested, the action should have been filed within three years. The deed No.6005 (P4) had been extended on 18.01.1984 and this action is filed on 03.05.1990. Assuming that the plaintiff has come to know of the execution of the deed in 1986 or in January 1987, three years period is lapsed. But according to the judgment in Ranasinghe Vs. De Silva 78 NLR 500, the period of three years runs from the date of execution of the deed, i.e.18.01.1984. If that be no, the plaintiff's action is prescribed in terms of Section 10 of the Presumption Ordinance .

(4) Value of the Land.

The plaintiff says that the normal value of the land in 1984 was about 2 ½

accepted as he is not a qualified Valuer. The plaintiff has not proved by authentitave valuation reports of the value of the land. Further he cannot says it is laesio enormis because he has not averred laesio enormis and also not adduced any evidence to prove it.

The doctrine of laesio enormis is applicable only in cases where the plaintiff was not aware of the real market value of the property that was transferred by him. In the present case, the plaintiff knew that value of the land in 1984 it about 2 ½ Lakhs. Hence, he cannot seek remedy on the basis of laesio enormis in this case.

For the reasons stated above, I hold that the plaintiff has failed to prove his case. I affirm the judgment of the learned District Judge and dismiss this appeal with costs.

JUDGE OF THE COURT OF APPEAL

Deepali Wijesundera J.,

I agree.

JUDGE OF THE COURT OF APPEAL